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In the Supreme Court of the United States

OCTOBER TERM, 1979

PATRICIA R. HARRIS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, APPELLANT

v.

CHARLES EDWARD WILSON, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

JURISDICTIONAL STATEMENT

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No.

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v.

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JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the district court (App. A, *infra*, 1a-20a) is reported at 478 F. Supp. 1046.

JURISDICTION

The order of the district court (App. A, *infra*, 1a-20a) was entered on October 12, 1979. A notice of

appeal was filed on November 8, 1979 (App. C, *infra*, 24a-25a).[1] On December 28, 1979, Mr. Justice Stevens extended the time for docketing the appeal to and including March 7, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1252. *Weinberger* v. *Salfi*, 422 U.S. 749, 763 n. 8 (1975); *McLucas* v. *De Champlain*, 421 U.S. 21, 31-32 (1975).

QUESTION PRESENTED

Whether Section 1611(e)(1)(A)-(B) of the Social Security Act violates the Due Process Clause of the Fifth Amendment by excluding from eligibility for Supplemental Security Income public assistance benefits otherwise eligible individuals between the ages of 21 and 65 who are residents of public mental institutions.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment to the Constitution provides in pertinent part:

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[1] The judgment of the district court (App. B, *infra*, 21a-23a) was entered on December 19, 1979, after the filing of the Secretary's notice of appeal from the district court's order. The filing of the notice of appeal was authorized by 28 U.S.C. 1252, which provides for direct appeal to this Court from "an interlocutory or final judgment, decree or *order* of any court of the United States * * * holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party" (emphasis added). Cf. Fed. R. App. P. 4(a)(2) ("* * * a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after such entry and on the day thereof.").

> No person shall * * * be deprived of life, liberty, or property, without due process of law * * *.

2. Section 1611 of the Social Security Act, 42 U.S.C. 1382, and Section 1905 of the Act, 42 U.S.C. 1396d, are set forth in pertinent part in Appendix D, *infra*, 26a-28a.

STATEMENT

1. Title XIX of the Social Security Act, as amended, 42 U.S.C. 1396 *et seq.*, establishes a medical assistance program, commonly known as "Medicaid," under which the federal government provides financial assistance to those states that choose to reimburse the costs of medical treatment for needy persons. See *Beal* v. *Doe*, 432 U.S. 438, 440-441 (1977).[2] Medicaid benefits generally cover the costs of inpatient and outpatient treatment for both physical and mental illness. Section 1905(a) of the Act, however, specifically excludes from coverage under the Medicaid program services provided to individuals between the

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[2] The Medicaid program identifies two groups of needy persons, the "categorically needy" (including families with dependent children and the aged, blind and disabled eligible for benefits under the Supplemental Security Income (SSI) program, 42 U.S.C. 1381 *et seq.*), and the "medically needy" (including persons who would be eligible for AFDC or SSI payments if they did not have income or resources in excess of the statutory standards and who have insufficient income and resources to pay for necessary medical care). Participating states are not required to extend Medicaid coverage to the "medically needy." See 42 U.S.C. 1396a(a)(10)(A), (C); *Beal* v. *Doe*, *supra*, 432 U.S. at 440 n.1.

ages of 21 and 65 in an institution for tuberculosis or mental diseases. 42 U.S.C. 1396d(a)(1), (4)(A), (14), (15), (16).

Title XVI of the Act, 42 U.S.C. 1381 *et seq.*, establishes the Supplemental Security Income (SSI) program, which provides monthly federal cash assistance to needy aged, blind and disabled persons.[3] Section 1611(e) of the Act provides that no person shall be eligible for SSI benefits in any month "if throughout such month he is an inmate of a public institution."[4] The Act, however, provides a limited exception to this exclusion. An otherwise eligible individual in a public health care facility that is receiving Medicaid payments on his account is entitled to receive SSI benefits of up to $25 per month. 42 U.S.C. 1382(e)(1)(B). Because of their exclusion from coverage under the Medicaid program, persons between 21 and 65 years of age in public mental institutions are not eligible to receive SSI benefits.

2. Appellees are patients in public mental institutions between the ages of 21 and 65 who have been denied SSI benefits. In December 1973, they filed

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[3] SSI was enacted to replace several federal-state grant programs with a uniform federal minimum assistance grant administered by the Secretary of Health, Education, and Welfare. See *Califano* v. *Torres*, 435 U.S. 1, 2 (1978); *Wilson* v. *Edelman*, 542 F.2d 1260, 1267-1268 n.15 (7th Cir. 1976).

[4] "An 'inmate of a public institution' is a person who is living in a public institution and receiving treatment and/or services which are appropriate to the person's requirements." 20 C.F.R. 416.231(a)(3).

this class action in the United States District Court for the Northern District of Illinois, challenging the constitutionality of Section 1611(e)(1)(A)-(B) of the Social Security Act, 42 U.S.C. 1382(e)(1)(A)-(B), on the ground that their exclusion from SSI benefits violates the equal protection component of the Due Process Clause of the Fifth Amendment.[5]

The district court granted appellees' motion for summary judgment, holding that Section 1611(e)(1)(A)-(B) of the Act is unconstitutional (App. A, *infra*, 1a-20a).[6] The court first concluded that the

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[5] In their initial complaint, appellees sought declaratory, monetary, and injunctive relief against both the federal government and the State of Illinois, claiming that, in addition to Section 1611(e), various other state and federal statutory provisions were unconstitutional. See *Wilson* v. *Edelman*, *supra*, 542 F.2d at 1263. A three-judge district court denied class certification and dismissed appellees' claims against the Secretary for lack of jurisdiction on the ground that appellees had failed to exhaust their administrative remedies. The claim against the State was denied on substantive grounds. On appeal, the court of appeals held that the district court had jurisdiction over appellees' claims against the federal government under 42 U.S.C. 1383(c)(3) and remanded for consideration of appellees' claims for class certification and declaratory relief. *Id.* at 1275. The appeal from the order of the district court sustaining the constitutionality of the Illinois statute was dismissed for lack of jurisdiction. *Id.* at 1282.

[6] The court also certified the case as a class action, defining the class as (App. B, *infra*, 21a):

> all persons residing in HEW Region V who have been terminated from benefits under Title XVI, or who have applied for Supplemental Security Income benefits under Title XVI and have been denied such benefits, on or after

statutory classification discriminated on the basis of a person's mental health status (*id.* at 8a). It then determined that mental health classifications are sufficiently like classifications based on race and national origin to require a higher standard of judicial scrutiny than is normally applicable in reviewing social welfare legislation (*id.* at 9a-15a). In particular, the court ruled that mental health classifications "must serve important governmental interests and must be substantially related to achievement of those objectives" (*id.* at 17a, quoting *Califano* v. *Webster*, 430 U.S. 313, 316-317 (1977)). Applying this standard to the classification in the present statute, the court held that the governmental interests served by the classification[7] "are not of sufficient importance to sustain the exclusion of" members of appellees' class (*id.* at 17a).

THE QUESTION IS SUBSTANTIAL

The district court has held an Act of Congress unconstitutional. In doing so, the court incorrectly con-

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January 1, 1974, solely because they are between the ages of 21 and 65 and hospitalized in a public mental institution.

HEW Region V includes the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin.

[7] The Secretary had argued that the statutory classification was justified on three separate grounds (App. A, *infra*, 16a):

> 1) the conservation of federal resources; 2) the concern that federal funds be received on behalf of residents of qualified institutions; and 3) the fact that [appellees] are not "similarly situated" with Medicaid patients in terms of federal interest and control.

cluded that Section 1611(e)(1)(A)-(B) of the Social Security Act discriminates on the basis of mental health status. As we show below, the SSI classification is grounded, not on mental health considerations, but on eligibility for Medicaid benefits under Section 1905(a) of the Act. The exclusion from Medicaid coverage of persons aged 21 to 65 in mental institutions has been upheld against attack on equal protection grounds. *Legion* v. *Richardson*, 354 F. Supp. 456 (S.D. N.Y.) (three-judge court), aff'd *sub nom. Legion* v. *Weinberger*, 414 U.S. 1058 (1973); *Kantrowitz* v. *Weinberger*, 388 F. Supp. 1127 (D. D.C. 1974) (three-judge court), aff'd, 530 F.2d 1034 (D.C. Cir.), cert. denied, 429 U.S. 819 (1976). Moreover, assuming arguendo that a mental health classification is involved here, the court below erred in ruling that such a classification must be subjected to a heightened level of judicial scrutiny. If the court had applied the correct standard of review, it would have concluded that the federal government's interest in conserving resources by leaving to the states their traditional responsibility of providing for the mentally ill in state institutions provides a rational basis justifying the statutory classification.[8] Accordingly, review by this Court is appropriate.

1. As the Court remarked in *Califano* v. *Boles*, No. 78-808 (June 27, 1979), slip op. 12, "[t]he proper classification for purposes of equal protection

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[8] The Secretary estimates that the cost of providing benefits under the district court's order would be $7 million annually for Region V and $95 million annually nationwide.

analysis is not an exact science, but scouting must begin with the statutory classification itself." Contrary to the district court's conclusion (App. A, *infra*, 8a), the Social Security Act does not exclude individuals from SSI benefits on the basis of mental health. Rather, the statute classifies individuals for SSI purposes according to their Medicaid eligibility.

Section 1611(e)(1)(A) of the Act provides that residents of public institutions are ineligible for SSI benefits. The reason for this exclusion was Congress' belief that the needs of these individuals were being met by the institutions in which they resided. See H.R. Rep. No. 92-231, 92d Cong., 2d Sess. 149-150 (1971). See also *Baur* v. *Mathews*, 578 F.2d 228, 233, 234 (9th Cir. 1978). However, Congress drew one narrow exception to the exclusion. It provided in Section 1611(e)(1)(B) that residents of public institutions receiving Medicaid payments on their behalf are entitled to SSI benefits of up to $25 per month.[9]

The report of the House Committee explained the purpose of the exception:

> People who are residents of certain public institutions, or hospitals or nursing homes which are getting Medicaid funds, would get bene-

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[9] The amount of the monthly SSI payment depends on whether the resident has an eligible spouse. See 42 U.S.C. 1382(e)(1)(B)(i)-(iii). Under Section 1611(e)(1)(B) of the Act, Medicaid patients in private facilities are also eligible for SSI benefits of up to $25 per month. Individuals in private institutions who are not covered by Medicaid may be eligible for regular SSI payments, depending on their countable income. 42 U.S.C. 1382(a) and (b).

> fits of up to $25 a month (reduced by nonexcluded income). For these people most subsistence needs are met by the institution and full benefits are not needed. Some payment to these people, though, would be needed to enable them to purchase small comfort items not supplied by the institution. No assistance benefits will be paid to an individual in a penal institution.

H.R. Rep. No. 92-231, *supra*, at 150. See also H.R. Rep. No. 96-451 (Part 1), 96th Cong., 1st Sess. 153 (1979) (the $25 monthly SSI payment to Medicaid patients "is intended to take care of small personal expenses, with the cost of maintenance and medical care being provided through other programs."). Thus, Section 1611(e)(1)(B) provides a modest monthly allowance to institutionalized Medicaid recipients to enable them to purchase items not covered by the Medicaid program. Section 1611(e)(1)(A)-(B) serves the rational purpose of providing assistance to individuals in public institutions for whom the federal government has already assumed partial financial responsibility under Medicaid. It is therefore apparent that the distinction drawn by the statute is based on Medicaid eligibility, not on mental health.

The district court, however, appears to have concluded that the Medicaid program itself discriminates on the basis of mental health and that SSI's incorporation of the Medicaid eligibility scheme therefore reflects the mental health classification. But eligibility for Medicaid under Section 1905(a) of the Act does not turn on the mental health status of the individual. So long as they otherwise meet eligibility requirements, numerous categories of persons receiving treat-

ment for mental illness qualify for coverage under the Medicaid program, including those who are receiving their treatment in general care hospital facilities, skilled nursing facilities, and qualifying intermediate care facilities. 42 U.S.C. 1396d(a)(1), (4), (15). In addition, mentally ill persons under the age of 21 and those over 65 years of age can qualify for Medicaid coverage regardless of where they are treated. 42 U.S.C. 1396d(a)(14), (16). Because they are eligible for Medicaid benefits, these groups of mentally ill persons are not excluded from eligibility for SSI benefits under Section 1611(e)(1)(A)-(B). Furthermore, while some mentally ill persons who reside in public mental institutions may not receive Medicaid and SSI benefits, there is nothing in the legislative record (see pages 13-14, *infra*) to suggest that Congress "selected or reaffirmed a particular course of action at least in part 'because of,' not merely "in spite of,' its adverse effects upon an identifiable group." *Personnel Administrator of Massachusetts* v. *Feeney*, 442 U.S. 256, 279 (1979). Accordingly, the court below erred in concluding that the Medicaid classification incorporated into Section 1611(e)(1)(B) is based on mental health considerations or was intended to discriminate against the mentally ill as a class.

If we are correct in our submission that the statutory scheme does not classify SSI recipients on the basis of mental health, then (as even the district court agreed (App. A, *infra*, 7a-8a)), the statute need only serve some rational objective in order to satisfy constitutional standards. See, *e.g.*, *Califano* v. *Azna-*

vorian, 439 U.S. 170, 174-175 (1978); *Califano* v. *Torres*, 435 U.S. 1, 5 (1978); *Mathews* v. *DeCastro*, 429 U.S. 181, 185 (1976); *Weinberger* v. *Salfi*, 422 U.S. 749, 770 (1975). As we show below (see pages 12-16, *infra*), the classification in this case unquestionably has a rational basis.

2. Even assuming that the statutory classification is based on mental health status, the district court improperly applied a heightened standard of review to that classification. The court determined that the mentally ill comprise a "quasi-suspect" class (App. A, *infra*, 9a-15a) and that distinctions according to mental health, like distinctions based on gender or legitimacy, must be "substantially related" to furthering "important governmental interests" (*id.* at 17a).[10]

Unlike classifications based on race, national origin, gender or legitimacy, mental health classifications do not warrant strict or "middle-tier" (App. A, *infra*, 13a) judicial scrutiny. The distinguishing feature of classifications based on race and national origin, the so-called "suspect" groups, is that members of such groups are identifiable by certain immutable characteristics, determined solely by accident of birth,

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[10] There are literally hundreds of statutes drawing distinctions on the basis of mental competence or mental illness, encompassing such diverse areas as marriage, property rights, contract rights, and the right to sue, make a will, engage in occupations, vote, hold office, serve on juries, and obtain driver's licenses. See S. Brakel & R. Rock, *The Mentally Disabled and the Law* 240-247, 315-340 (1971 ed.). Such laws are in addition to the numerous laws concerning hospitalization and treatment. See *Addington* v. *Texas*, 441 U.S. 418 (1979).

that bear "no relation to the individual's ability to participate in and contribute to society." *Mathews* v. *Lucas*, 427 U.S. 495, 505 (1976). See also *Frontiero* v. *Richardson*, 411 U.S. 677, 686 (1973) (plurality opinion). Mental illness, by contrast, is not necessarily permanent or determined by accident of birth. Perhaps most important, as the district court itself acknowledged (App. A, *infra*, 11a), mental illness is directly related to an individual's ability to "perform or contribute to society." See *Doe* v. *Colautti*, 592 F.2d 704, 711 (3d Cir. 1979). Because mental illness is a neutral factor that cuts across racial and other suspect boundaries and relates directly to an individual's ability to perform, it is equivalent to "such nonsuspect statuses as intelligence or physical disability * * *." *Frontiero* v. *Richardson*, *supra*, 411 U.S. at 686 (plurality opinion).[11] The district court therefore erred in subjecting the statutory classification to heightened scrutiny.

3. Application of the correct standard of judicial review leads to the conclusion that Section 1611(e)(1)(A)-(B) of the Social Security Act is constitu-

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[11] The mentally ill, moreover, are not necessarily a "politically impotent" group (App. A, *infra*, 11a-12a), as evidenced by the fact that the very benefits that appellees seek in this litigation previously have been extended by Congress to several categories of mentally ill persons, including those between 21 and 65 years of age. Moreover, in asserting that the mentally ill have been subject to a history of unequal protection (*id.* at 12a), the district court failed to consider whether the unequal treatment may be attributable in large measure to the actual disabilities from which many of the mentally ill suffer. See *Doe* v. *Colautti*, *supra*, 592 F.2d at 711.

tional. The decision to exclude patients between 21 and 65 years of age in public mental hospitals from the Medicaid program and, by extension, from the SSI program, is reasonably related to legitimate congressional concerns. A brief review of the legislative history of the Medicaid program is necessary in order to understand the reasons for the statutory classification.

In 1950, Congress adopted a system of federal grants to the states for the operation of state programs to aid the permanently and totally disabled. The statute establishing the aid program specifically excluded payments on behalf of "any individual * * * who is a patient in an institution for * * * mental diseases." Act of August 28, 1950, ch. 809, 64 Stat. 558. When Congress adopted the Medicaid Act in 1965 (Pub. L. No. 89-97, 79 Stat. 286 *et seq.*), it retained the general exclusion of patients in institutions for treatment of mental illness. Pub. L. No. 89-97, Section 1905(a)(1), (4), (15)(B), 79 Stat. 351-532. This exclusion was based on Congress' belief that the long term care of patients in mental institutions "had traditionally been accepted as a responsibility of the States." S. Rep. No. 404, 89th Cong., 1st Sess. 144 (1965). At the same time, however, Congress did provide Medicaid coverage to the needy aged in mental institutions (Pub. L. No. 89-97, Section 1905(a)(14), 79 Stat. 351-352), in recognition of the severe health cost problems of persons over 65

years of age. See S. Rep. No. 404, *supra*, at 277 (supplemental views).[12]

In 1972, Congress further broadened the class of mental patients eligible for Medicaid by providing for the eligibility of children. Pub. L. No. 92-603, Section 299B(a), (b), 86 Stat. 1460-1461. The 1972 amendments extended Medicaid coverage to persons under age 21 who are inpatients in psychiatric hospitals, provided that the treatment is certified as being likely to improve the patient's condition. In providing for this expansion of coverage, Congress expressed its belief that "the nation cannot make a more compassionate or better investment in medicaid than this effort to restore mentally ill children to a point where they may very well be capable of rejoining and contributing to society as active and constructive citizens." S. Rep. No. 92-1230, 92d Cong., 2d Sess. 281 (1972).[13]

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[12] Medicaid coverage was also provided for the treatment of the mentally ill in general care facilities, including nursing homes and medical hospitals. Pub. L. No. 89-97, Section 1905 (a)(1), (4), 79 Stat. 351. In providing this assistance, Congress sought to encourage alternative forms of treatment for the mentally ill outside the traditional setting of the mental institution. S. Rep. No. 404, *supra*, at 144-147.

[13] A Senate proposal to authorize demonstration projects for the purpose of evaluating the feasibility of extending Medicaid coverage to persons between the ages of 21 and 65 in mental hospitals (see S. Rep. No. 92-1230, *supra*, at 281) was rejected in conference. See H.R. Conf. Rep. No. 92-1605, 92d Cong., 2d Sess. 65 (1972).

The legislative record establishes that the general exclusion from Medicaid coverage of persons in mental institutions is reasonably related to Congress' belief that the care of the mentally ill in mental hospitals is properly the responsibility of the states. The statutory classification was specifically upheld on that basis in *Legion* v. *Richardson*, 354 F. Supp. 456, 459 (S.D.N.Y.) (three-judge court), aff'd *sub nom. Legion* v. *Weinberger*, 414 U.S. 1058 (1973). Insofar as the Medicaid program distinguishes on the basis of age, by extending coverage to children and the aged in mental institutions while excluding those between 21 and 65 years of age, that age-based distinction was properly upheld in *Kantrowitz* v. *Weinberger*, 388 F. Supp. 1127, 1129-1131 (D.D.C. 1974) (three-judge court), aff'd, 530 F.2d 1034 (D.C. Cir.), cert. denied, 429 U.S. 819 (1976). As the district court in *Kantrowitz* concluded, because of its concern with the enormous expense involved in supplementing traditional state aid to the mentally ill, Congress could rationally decide to extend Medicaid coverage one step at a time to those perceived as most in need of assistance. 388 F.Supp. at 1131. See *Califano* v. *Jobst*, 434 U.S. 47, 57 (1977); *Jefferson* v. *Hackney*, 406 U.S. 535, 546 (1972).

The resulting exclusion from SSI benefits of persons between the ages of 21 and 65 in public mental institutions is justifiable for the same reasons that the Medicaid classification was upheld in *Legion* and *Kantrowitz*. It was reasonable for Congress to continue its past practice of leaving to the states the re-

sponsibility of providing for the needs of persons in public mental hospitals. The inclusion under SSI of those persons in mental hospitals already receiving Medicaid benefits was based on Congress' desire to expend a limited amount of resources to provide a small supplemental allowance to those thought to be in need of special assistance.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted.

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MARCH 1980

APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 73 C 2337

THOMAS STERLING, ET AL., individually and on behalf of all others similarly situated, PLAINTIFFS

vs.

PATRICIA R. HARRIS, Secretary of the Department of Health, Education and Welfare, DEFENDANT

No. 73 C 3070

CHARLES EDWARD WILSON, ET AL., individually and on behalf of all others similarly situated, PLAINTIFFS

vs.

PATRICIA R. HARRIS, Secretary of the Department of Health, Education and Welfare, DEFENDANTS

Before the HONORABLE NICHOLAS J. BUA
United States District Judge

ORDER

These consolidated cases are here on remand from the Seventh Circuit Court of Appeals, where the plaintiffs successfully challenged a district court's dismissal of their complaint for lack of jurisdiction. *Wilson* v. *Edelman*, 542 F.2d 1260 (7th Cir. 1976). As noted by the court of appeals, jurisdiction over

this matter arises under 42 U.S.C. § 1383(c)(3). 542 F.2d at 1269. Before the court are the parties' cross-motions for summary judgment.

The plaintiffs challenge the constitutionality of 42 U.S.C. § 1382(e)(1)(A)-(B).[1] These subsections,

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[1] 42 U.S.C. § 1382(e)(1)(A) provides:

Limitation on eligibility of certain individuals:

Except as provided in subparagraph (B) no person shall be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if throughout such month he is an inmate of a public institution.

42 U.S.C. § 1382(e)(1)(B) provides in pertinent part:

In any case where an eligible individual or his eligible spouse (if any) is, throughout any month, in a hospital extended care facility, nursing home, or intermediate care facility receiving payments (with respect to such individual or spouse) under a State plan approved under subchapter XIX of this chapter, the benefit under this subchapter for such individual for such month shall be payable . . . (i) at a rate not in excess of $300 per year [$25.00 per month].

The Title XIX program referred to in section 1382(e)(1)(B) is the Medicaid Program.

Benefits available under Medicaid include:

in-patient hospital services (other than services in an institution for tuberculosis or mental disease) in both public and private hospitals.
skilled nursing home services.
intermediate care facility services, including services in public institutions for the mentally retarded.
in-patient hospital services and skilled nursing home services for individuals 65 years of age or over in an institution for turberculosis or mental diseases.
in-patient psychiatric hospital services for individuals under age 21.

42 U.S.C. § 1396d(a)(1)(4)(14)(15)(16).

when read together, serve to exclude certain plaintiffs, who are aged, blind, and/or disabled individuals, from benefits received by other such individuals under the federally funded Supplemental Security Income Program (SSI), 42 U.S.C. § 1381 *et seq.* The plaintiffs claim that this exclusion constitutes a violation of their rights to equal protection under the Fourteenth Amendment.

The facts of the two cases are undisputed. Plaintiffs represent two classes of individuals: residents of public mental health institutions between the ages of twenty-one and sixty-five (the *Wilson* plaintiffs) (No. 73 C 3070), and pretrial detainees (the *Sterling* plaintiffs) (No. 73 C 2337). The exclusion of these two groups from receipt of benefits is not directly stated in the statute. Instead, it arises from a series of related provisions.

I. THE PUBLIC MENTAL HEALTH INSTITUTION EXCLUSION

The statute provides initially that all aged, blind, or disabled individuals who are found to be eligible under the Act are entitled to receipt of SSI benefits paid by the Secretary of Health, Education and Welfare. 42 U.S.C. § 1381a.[2] The exclusion at issue in the present case arises from two modifying provisions. The first of these provisions provides that inmates of public institutions are not eligible for SSI benefits.

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[2] Full SSI benefits payable to an individual with no other source of income were $146 a month at the time of the statute's 1974 enactment and have since increased with cost-of-living adjustments. 42 U.S.C. § 1382(b)(1).

42 U.S.C. § 1382(e)(1)(A). This general exclusion is then altered, however, by 42 U.S.C. § 1382(e)(1)(B), which provides a maximum $25 per month stipend to inmates of institutions that are eligible to receive payments on behalf of individuals under the Medical Assistance title (Medicaid).

The exclusion of the *Wilson* plaintiffs from the $25 per month living stipend results from this use of the Medicaid subchapter in determining eligibility for the SSI benefits. The Medicaid statute, 42 U.S.C. § 1396 *et seq.*, while providing for payments to most public and private medical facilities, 42 U.S.C. § 1396d(a)(1)-(17), excludes from its coverage payments on behalf of an individual who is between the ages of twenty-one and sixty-five and who is a patient in a public institution for mental illness. 42 U.S.C. § 1396d(a)(16), (17)(A)-(B). Thus, the *Wilson* plaintiffs note that while needy aged, blind and disabled persons in institutions are ordinarily eligible to receive the $25 a month SSI benefit, their class has been excluded because the Medicaid eligibility scheme has been pyramided into the SSI statute. This exclusion is said to violate the equal protection clause.

A. The Appropriate Level of Review: The Three-Tier Approach

The Supreme Court has used a three-tier analysis in scrutinizing legislation that has created a classification that has served to exclude a certain group from its benefits. *See* L. Tribe, American Constitutional Law 1082 (1978). The usual form of review,

the "rational relationship test" or "minimal scrutiny" analysis, requires only that the statute bear some rational or reasonable relation to a legitimate state interest. *See e.g., Dandridge* v. *Williams*, 397 U.S. 471 (1970). If this test is employed, the defendant must show merely that "the distinctions that are drawn have some relevance to the purpose for which the classification is made." *Rinaldi* v. *Yeager*, 384 U.S. 305, 309 (1966).

The second level of review frequently employed by the Court is the "strict scrutiny" test. If a suspect class, *Graham* v. *Richardson*, 403 U.S. 365 (1971) (alienage); *Loving* v. *Virginia*, 388 U.S. 1 (1967) (race); *Oyama* v. *California*, 332 U.S. 633 (1948) (national origin), or a fundamental interest, *Shapiro* v. *Thompson*, 394 U.S. 618 (1969) (interstate travel); *Harper* v. *Virginia Bd. of Elections*, 383 U.S. 663 (1966) (voting) is involved, the Court will require that a challenged statute be a necessary means of furthering a compelling state interest if it is to withstand an equal protection challenge. *See San Antonio Independent School Dist.* v. *Rodriguez*, 411 U.S. 1, 16 (1973).

A third level of scrutiny, that of a heightened or intermediate judicial review has recently evolved. *See Gunther, The Supreme Court, 1971 Term—Forward: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 Harv. L. Rev. 1 (1972). This tier has been employed by the Court in scrutinizing legislation that serves to discriminate against groups that possess certain charac-

teristics in common with the suspect groups. *See* L. Tribe, American Constitutional Law 1090. While the Court has been hesitant to recognize new suspect classifications, it has recognized instead certain "quasi-suspect" groups that will receive an intermediate level of judicial review. *Trimble* v. *Gordon*, 430 U.S. 762 (1977) (illegitimacy); *Frontiero* v. *Richardson*, 411 U.S. 677 (1973) (sex). Under this level of scrutiny a classification "must serve important governmental objectives and must be substantially related to achievement of those objectives." *Califano* v. *Webster*, 430 U.S. 313, 316-17 (1977). *See Craig* v. *Boren*, 429 U.S. 190, 197 (1976).

Accordingly, the equal protection analysis here must begin with an analysis of the classification created by the statute and a determination of whether that classification discriminates on the basis of either suspect or quasi-suspect criteria.[3] As recently noted by the Supreme Court, "proper classification for purposes of equal protection analysis is not an exact science, but scouting must begin with the statutory classification itself." *Califano* v. *Boles*, —— U.S. ——, ——, 99 S. Ct. 2767, 2775 (1979).

B. The Statutory Classifications

The statute at issue in the present case creates three classifications: (1) age, and (2) residence in a public, (3) mental health hospital.

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[3] There has been no infringement of a fundamental interest in the present case. *See Flemming* v. *Nestor*, 363 U.S. 603, 610-11 (1960).

1. *Age*

Age classifications have not been recognized as suspect for purposes of equal protection analysis. *Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307 (1976); *Trafelet* v. *Thompson*, 594 F.2d 623 (7th Cir.) *cert. docketed* 48 U.S.L.W. 3001 (June 25, 1979). Thus, if, as the defendant claims, the classification in the present case is based on age alone, lower-tier scrutiny would apply, and the defendant would have to show merely a rational relationship between the classification and a legitimate state interest. *See Murgia, supra.*

There is certainly an age classification present here, for only those inmates of public mental health institutions who are between the ages of twenty-one and sixty-five are excluded from receipt of the SSI benefits. Age, however, is not the sole operative factor in this classification. Blind and disabled persons between the ages of twenty-one and sixty-five who do not reside in public mental hospitals are eligible to receive benefits under the statute. Thus, the statute discriminates on the basis of residence in a public mental health institution as well as age, and this court's analysis must continue on the basis of impact upon people residing in such institutions.

2. *Residence in a public institution*

The statute's distinction between residents of public and private institutions withstands equal protection scrutiny. Residence in a public institution has

never been recognized as a classification that compels a heightened level of equal protection scrutiny, nor can this court discern any commonalities between this classification and those that have received such treatment. Thus, lower-tier "rational relation" scrutiny must be applied.

Since a classification that furthers any legitimate state purpose can survive lower-tier analysis, the public/private classification, by itself, must be upheld. The purpose for classifying according to public and private institutions is apparent in the statutory scheme. Congress recognized that most subsistence needs of public institution inmates were being met, and they were not in need of equal treatment under the full SSI benefits. 1972 U.S. Code Cong. and Admin. News. 4989 at 5136. Congress could well conclude that public institution inmates are receiving all of the funds from the public treasury to which they are entitled. *See Dandridge* v. *Williams*, 397 U.S. 471 (1970).

3. *Mental illness*

If the statute classified only according to age and residence in a public institution, it would merely have to pass minimal judicial scrutiny. The statute, however, also classifies according to mental health, for residents of public general health hospitals are eligible for the benefits while certain residents of public mental health hospitals are not. Thus, it is necessary to determine the appropriate level of review to be employed in reviewing a mental health classification.

C. Mental Health Classifications Deserve Quasi-Suspect Status

The *Wilson* plaintiffs assert that while mental illness is not likely to be considered a suspect classification (e.g. based on race, alienage, or national origin), the classification should be subject to the intermediate level of scrutiny that has been recognized for "quasi-suspect" groups (e.g. women and illegitimate children) having certain characteristics of the suspect classes. In the alternative, the plaintiffs urge that the exclusion at issue in the present case wholly fails to meet even minimal standards of rationality. Defendants claim that the heightened level of judicial scrutiny would be inappropriate for a mental health classification, and they assert that the classification survives minimal scrutiny, for it is reasonably related to a legitimate state interest.

No Supreme Court [4] or court of appeals case characterizing mental illness for purposes of equal pro-

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[4] The Supreme Court has made a summary affirmance of a district court decision upholding the exclusion of persons under the age of sixty-five from Medicaid and Medicare coverage of in-patient mental hospital treatment. *Legion* v. *Weinberger*, 354 F. Supp. 456 (S.D. N.Y. 1973), *aff'd* 414 U.S. 1058 (1973). However, the precedential effect of a summary affirmance extends no further than the precise issues presented and necessarily decided by the action of the lower court. *Ill. State Bd. of Elections* v. *Socialist Workers Party*, —— U.S. ——, ——, 99 S. Ct. 983, 985 (1979); *Mandel* v. *Bradley*, 432 U.S. 173, 176 (1977). The district court never discussed whether the mental illness classification demanded heightened judicial scrutiny. Further, the lower court cited legislative history to show Congressional awareness that the care of the mentally ill in state hospitals was historically the responsibility of the states. 354 F. Supp. at 459, citing 1965 U.S. Code Cong. and Admin. News 2086.

tection analysis has been called to the attention of this court. Without the benefit of such direction, it is necessary for this court first to discern the common indicia of the groups that have been distinguished as being suspect or quasi-suspect classification, and then to determine whether a mental health classification is analogous. This is not easily accomplished, for several different indicia have been enunciated by the Supreme Court in its cases, and additional factors have been identified by commentators.

1. *The indicia of suspect classes*

In *Frontiero* v. *Richardson*, 411 U.S. 677 (1973), the Supreme Court depicted two related indicia of the suspect classifications. In addressing a claim of gender-based discrimination, the Court first noted that "sex, like race and national origin, is an immutable characteristic determined solely by the accident of birth." *Id.* at 686. *See Korematsu* v. *United States*, 323 U.S. 214, 243 (1944) (Jackson, J., dissenting). The Court followed this description by noting a second suspect trait that the characteristic "frequently bears no relation to ability to perform or contribute to society." 411 U.S. at 686.

The suspect indicia have received further delineation in other Supreme Court cases. In *Graham* v. *Richardson*, 403 U.S. 365, 372 (1971), the Court indicated that suspect classifications are those that discriminate against discrete and insular minorities

that are unable to express a potent voice in the political process. *See United States* v. *Carolene Products Co.*, 304 U.S. 144, 152-53 n.4 (1938). A further depiction arose in *San Antonio School District* v. *Rodriguez*, 411 U.S. 1, 28 (1973), where the Court recognized the need to provide heightened scrutiny in favor of groups that "are saddled with such disabilities or subject to such a history of purposeful unequal treatment . . . as to command extraordinary protection. . . ." This characteristic has also been referred to as a "stigma of inferiority and badge of opprobrium" common to the suspect groups. *Developments in the Law—Equal Protection*, 82 Harv. L. Rev. 1065, 1127 (1969).

2. *Mental health classifications involve the most significant suspect indicia*

In applying these indicia to the mental health classification created by the present statute, the court finds that only one of the indicia used to define suspect classes is absent in this case. A mental health problem sufficient to cause institutionalization will necessarily "bear [a] relation to ability to perform or contribute to society." *Frontiero* v. *Richardson*, 411 U.S. 677, 686 (1973). The existence of disadvantages based on that criteria are therefore understandable.

Aside from this characteristic, it appears that mental health classifications possess the significant indicia of the suspect classifications recognized in other cases. The mentally ill are a politically im-

potent, insular minority. Inmates in a public mental health institution enjoy limited rights of association and necessarily have difficulty combining with other groups in our society to further their interests. *See United States* v. *Carolene Products Co.*, 304 U.S. 144, 152-53 n.4 (1938).

Indeed, such insularity has been recognized as the most significant indicium of the suspect classifications. *See* L. Tribe, American Constitutional Law 1003, 1077 (978); Ely, *Toward a Representation-Reinforcing Mode of Judicial Review*, 37 Md. L. Rev. 451 (1978).

Further, the mentally ill have been subject to a "history of unequal protection." *San Antonio School District* v. *Rodriguez*, 411 U.S. 1, 28 (1973). Indeed, the present legislative classification, by denying inmates of public health institutions the funds necessary to purchase personal, non-institutional items, serves to "perpetuate a feeling of inferiority as to their status in the community . . . [and its] impact is greater when it has the sanction of law." *Brown* v. *Board of Education*, 347 U.S. 483, 494 (1954). This factor has also been considered as perhaps the most important factor in determining new suspect categories. *See Developments in the Law-Equal Protection*, 82 Harv. L. Rev. 1065, 1127 (1969).

It is debatable whether and to what extent the mental illness is "an immutable characteristic determined solely by the accident of birth." *Frontiero* v. *Richardson*, 411 U.S. 677, 686 (1973). It would seem that the policy behind this indicium—to extend

extra protection to persons that have been identified by a factor over which they have no control—is satisfied in the case of the mentally ill.

3. *Prior district court decisions*

Several district courts have applied these indicia in classifying mental illness for purposes of equal protection analysis. Two district courts have refused to apply strict scrutiny. In *New York State Assoc. for Retarded Children* v. *Rockefeller*, 357 F. Supp. 752, 762 (E.D. N.Y. 1973), the court held that the plaintiff class, residents of a New York institution for the mentally retarded, had not been discriminated against on the basis of suspect criteria. The court there, however, only considered the traditional two-tier test and did not consider the possibility that mental health classifications fall under the middle-tier test which has since become more clearly established.

In a second case, *Doe* v. *Colautti*, 454 F. Supp. 621 (E.D. Pa. 1978), the *Frontiero* indicia were cited by the court in its refusal to apply strict scrutiny to legislation imposing a 60-day limitation on benefits for psychiatric care. The court noted, however, that middle-tier scrutiny may have been appropriate for reviewing the statute, but such a determination was unnecessary since the statutory scheme would have survived scrutiny under this heightened standard of review. *Id.* at 632.

Two district courts have found middle-tier scrutiny appropriate for reviewing legislation that classifies

according to various types of mental disabilities. In *Frederick* v. *Thomas*, 408 F. Supp. 832, 836 (E.D. Pa. 1976), the court noted that while learning disabled children were not members of a suspect class, their minority status and political powerlessness supported an application of the "middle test" of equal protection. Similarly, in *Fialkowski* v. *Shapp*, 405 S. Supp. 946, 958-59 (E.D. Pa. 1975) the court recognized the need to apply "greater judicial scrutiny" to the claims of the mentally retarded. To support its use of this heightened review, the court cited *San Antonio Independent School Dist* v. *Rodriguez*, 411 U.S. 1, 28 (1973) for the proposition that political powerlessness and purposeful unequal treatment are shared by the suspect classes. 405 F. Supp. at 958-59.

In addition to these two district court holdings, various commentators have recognized a need for applying an intermediate level of scrutiny to statutes that classify mental health. *See* Burgdorf & Burgdorf, *A History of Unequal Treatment: The Qualifications of Handicapped Persons as a "Suspect Class" Under the Equal Protection Clause*, 15 Santa Clara Law. 855, 902-08 (1975); Note, *Mental Illness: A Suspect Classification*, 83 Yale L.J. 1237 (1974); Comment, *Wyatt* v. *Stickney and the Rights of Civilly Committed Mental Patients to Adequate Treatment*, 86 Harv. L. Rev. 1282, 1294 & n.62 (1973).

The court concludes that the common indicia that mental health shares with the suspect classifications are of sufficient importance to require the present

statutory classification to pass an intermediate level of judicial scrutiny.

C. The Asserted Legislative Purposes are Insufficient to Uphold the Statutory Classification

Middle-tier scrutiny requires that a statutory classification must be "reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation." *Reed* v. *Reed*, 404 U.S. 71, 76 (1971), *quoting Royster Guano Co.* v. *Virginia*, 253 U.S. 412, 415 (1920). *See Orr* v. *Orr*, —— U.S. ——, 99 S. Ct. 1102 (1979); *Califano* v. *Webster*, 430 U.S. 313, 316-17 (1977); *White* v. *Fleming*, 522 F.2d 730, 734-35 (7th Cir. 1975). The court must therefore ascertain the object of this legislation and determine whether this classification bears a substantial relation to this objective.[5]

The legislative discrimination must be evaluated in light of the primary purpose of the legislative scheme of which it is a part. *Weinberger* v. *Weisenfield*, 420 U.S. 636, 645 (1976). The legislative history of this statute indicates that the $25 per month stipend to residents of public institutions was intended to enable them to purchase small comfort items not provided by the institution. 1972 U.S. Code Cong. and Admin. News 4989, 5136. This history reveals no articulated legislative intent to ex-

[5] *See note, Legislative Purpose, Rationality, and Equal Protection*, 82 Yale L.J. 123 (1973) (discussing means-end scrutiny).

clude inmates of mental health institutions from these benefits, nor can this court conceive of a possible unexpressed purpose for the exclusion. It would seem that aged, blind, and disabled inmates of all public institutions would have similar needs. Indeed, the legislative history shows that the only group Congress expressly focused on excluding from these benefits were inmates in penal institutions. *Id.*

While the legislative history of the SSI statute reveals no express purpose for the use of the Medicaid eligibility scheme, the defendant suggests that it is justified for three reasons: 1) the conservation of federal resources; 2) the concern that federal funds be received on behalf of residents of qualified institutions; and 3) the fact that plaintiffs are not "similarly situated" with Medicaid patients in terms of federal interest and control.

The first of these asserted state interests will not sustain the classification created by the SSI statute. Maintaining fiscal integrity is a legitimate concern of government, but government may not limits its expenditures by making invidious distinctions between classes of its citizens. *Graham* v. *Richardson*, 403 U.S. 365, 374-75 (1971); *Shapiro* v. *Thompson*, 394 U.S. 618, 633 (1969). The conservation argument must fail, for the SSI statute has created such an invidious distinction by classifying on the basis of quasi-suspect criteria.

The remaining two purposes that have been advanced in support of the statute's use of the Medicaid eligibility scheme are similarly unconvincing. The

Medicaid statute provides payments to institutions to meet the subsistence needs of eligible individuals. The SSI statute provides supplemental income to the residents of Medicaid-eligible public institutions so that they may purchase personal items. Aged, blind, and disabled residents of public mental health hospitals are equally in need of this monthly stipend—the source of their subsistence payment bears no relation to their need for supplementary income.

A legislative classification that excludes a quasi-suspect group from its benefits "must serve important governmental interests and must be substantially related to achievements of those objectives." *Califano* v. *Webster*, 430 U.S. 313, 316-17 (1977). The governmental interests that are served by this mental health classification are not of sufficient importance to sustain the exclusion of the Wilson class. The exclusion appears to have been an accidental by-product of the legislative scheme rather than an intended means of achieving a calculated legislative objective.

Accordingly, the *Wilson* plaintiffs' motion for summary judgment is granted. The section of the Social Security Act that serves to exclude plaintiffs from receipt of SSI benefits is hereby struck down as violative of the Equal Protection Clause, and the defendant shall begin payments under the Act to all eligible inmates of public mental health institutions.

II. THE PRETRIAL DETAINEE EXCLUSION

The *Sterling* plaintiffs urge that the statute's exclusion of pretrial detainees will not withstand equal protection analysis. To determine the validity of this claim, the court again must apply the test formulated by the Supreme Court. In so doing, the court finds that neither strict scrutiny nor middle-tier scrutiny is the appropriate standard of review for this classification.

The challenged exclusion of the plaintiff class from receipt of the SSI benefit neither abridges a fundamental liberty [6] nor discriminates according to suspect criteria. The Supreme Court has directly held that pretrial detainees are not a suspect class. *Goosby* v. *Osser* 409 U.S. 512, 520 (1973), *citing McDonald* v. *Board of Election Commissioners,* 394 U.S. 802, 807-08. The Supreme Court has not considered whether quasi-suspect status might apply; this court concludes that such status would be inappropriate for pretrial detainees do not possess the significant indicia of the suspect classes.

The first of these indicia, that a suspect classification is based upon an immutable trait determined by the accident of birth, *Frontiero* v. *Richardson,* 411 U.S. 677, 686 (1973) is not descriptive of pretrial detainees. This class shares a status that arises during the individual's lifetime and is temporary in nature. Neither do pretrial detainees share a second characteristic of the suspect classes—that the com-

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[6] *See Flemming* v. *Nestor,* 363 U.S. 603, 610-11 (1960).

mon trait bears no relation to the person's ability to contribute to society. *See Frontiero*, 411 U.S. at 486. Confinement in a penal institution will prevent the detainee from full participation in societal matters and is based on a determination that is related in some degree to the detainee's prior participation in society. Finally, the fluid class of pretrial detainees cannot claim the history of purposeful inequal treatment that is shared by the suspect groups. *See San Antonio School District* v. *Rodriguez*, 411 U.S. 1, 28 (1973).

The challenged social welfare legislation, therefore, will be sustained if it is shown to bear a rational relation to a legitimate state interest. *Dandridge* v. *Williams*, 397 U.S. 471, 487 (1970); *McDonald, supra* at 809. This conclusion is supported by the Supreme Court's recent holding in *Bell* v. *Wolfish*, —— U.S. ——, 99 S. Ct. 1861 (1979). Although the *Wolfish* Court was evaluating the constitutionality of certain conditions of pretrial detention, the Court's refusal to exercise a heightened form of judicial review is applicable here. The court noted that "the determination whether these restrictions and practices constitute punishment in the constitutional sense depends on whether they are rationally related to a legitimate nonpunitive governmental purpose and whether they appear excessive in relation to that purpose." —— U.S. at ——, 99 S. Ct. at 1885-1886. The Court's use of the rational relation test in a case involving conditions of confinement supports this

court's use of that test in evaluating the exclusion challenged in the present case.

The challenged classification must be upheld under this lower-tier scrutiny. Although pretrial detainees were not singled out for exclusion from the SSI benefit, Congress did express its intent to exclude the inmates in penal institutions. *See* 1972 U.S. Code Cong. and Admin. News 5136. Thus, the classification challenged by the *Sterling* plaintiffs does not appear to contravene the legislative purpose. Further, the exclusion of these detainees from the small benefit being received by residents of medicaid-eligible institutions is not the result of an irrational and invidious legislative choice. *See Jefferson* v. *Hackney*, 406 U.S. 535, 546 (1972). The detainee status is necessarily temporary in nature, and the defendant could legitimately wish to withhold these extra-subsistence payments while the detainee is housed in a public institution and until his future status is determined.

Accordingly, the exclusion of pretrial detainees from SSI benefits is sustained, and the *Sterling* action is dismissed.

IT IS SO ORDERED.

DATED: October 10, 1979

/s/ Nicholas J. Bua
NICHOLAS J. BUA
Judge
United States District Court

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 73 C 3070

CHARLES EDWARD WILSON, ET AL., PLAINTIFFS

vs.

PATRICIA HARRIS, DEFENDANT

JUDGMENT

On October 10th, 1979, this Court issued a decision and orders herein. Pursuant to F.R.C.P. 58, and all prior proceedings herein, this Court upon that decision, now ORDERS, ADJUDGES AND DECREES:

1. This Court has jurisdiction over this case under 42 U.S.C. § 1383(c)(3).

2. Pursuant to F.R.C.P. 23(c)(3) this action is certified as a class action, the requirements of F.R.C.P. 23(a) and (b)(2) having been met. The class is defined as:

> all persons residing in HEW Region V who have been terminated from benefits under Title XVI, or who have applied for Supplemental Security Income benefits under Title XVI and have been denied such benefits, on or after January 1, 1974, solely because they are between the ages of 21 and 65 and hospitalized in a public mental institution.

3. Pursuant to 28 U.S.C. § 2201, 42 U.S.C. § 1382 (e) (1) (A)-(B) is declared violative of the equal protection guarantees of the Due Process Clause of the Fifth Amendment to the United States Constitution, insofar as such provisions serve to exclude plaintiffs and members of the plaintiff class from the Supplemental Security Income program ("SSI"), 42 U.S.C. § 1381 *et seq.* benefits at the levels provided under 42 U.S.C. § 1382(e)(1)(B).

4. The decisions of the defendant denying or terminating SSI benefits to the named plaintiffs Turney and Simmons and the members of the plaintiff class are reversed.

5. The question of the date from which defendant is required to pay SSI benefits to the named plaintiffs and members of the plaintiff class is reserved and defendants need not make any such payments until any appeals taken from this Court's October 10th decision and this judgment are exhausted.

6. The second sentence of the October 10, 1979 "minute order" herein ("The defendant shall begin payments under the Act to all eligible inmates of public mental health institutions.") is vacated.

7.(a) The second sentence beginning on p. 12, line 12 of the October 10, 1979 Order is amended to read, in its entirety: "The section of the Social Security Act that serves to exclude plaintiffs from receipt of SSI benefits is hereby struck down as violative of the equal protection guarantees of the Due Process Clause of the Fifth Amendment."

(b) The reference on p. 2, line 5 of the October 10, 1979 Order to the "Fourteenth Amendment" is hereby amended to read the "Fifth Amendment."

8. Plaintiffs are awarded costs pursuant to 28 U.S.C. § 2412.

Date: Dec. 18, 1979

/s/ Nicholas J. Bua
NICHOLAS J. BUA
Judge
United States District Court

Entered: December 19, 1979

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Civil Action No. 73 C 3070

CHARLES EDWARD WILSON, ET AL., PLAINTIFFS

v.

PATRICIA HARRIS, Secretary of the
Department of Health, Education and Welfare,
DEFENDANT

NOTICE OF APPEAL

Notice is hereby given that the defendant, above named, hereby appeals to the Supreme Court of the United States, pursuant to the provisions of Title 28, United States Code, Sections 1252 and 1201, from the Memorandum and Order entered in this action on the 10th day of October, 1979.

[Received Nov. 8, 1979—H. Stuart Cunningham, Clerk, United States District Court]

UNITED STATES OF AMERICA

THOMAS P. SULLIVAN
United States Attorney

by /s/Canella E. Henrichs

CANELLA E. HENRICHS
Assistant United States Attorney
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APPENDIX D

1. Section 1611 of the Social Security Act, 42 U.S.C. 1382, provides in pertinent part:

> (a)(1) Each aged, blind, or disabled individual [who meets applicable income and resources requirements] shall be an eligible individual for purposes of this subchapter.
>
> * * * * *
>
> (e)(1)(A) Except as provided in subparagraph (B) and (C), no person shall be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if throughout such month he is an inmate of a public institution.
>
> (B) In any case where an eligible individual or his eligible spouse (if any) is, throughout any month, in a hospital, extended care facility, nursing home, or intermediate care facility receiving payments (with respect to such individual or spouse) under a State plan approved under subchapter XIX [the Medicaid provisions] of this chapter, the benefit under this subchapter for such individual for such month shall be payable—
>
> > (i) at a rate not in excess of $300 per year (reduced by the amount of any income not excluded pursuant to section 1382a(b) of this title) in the case of an individual who does not have an eligible spouse;
> >
> > (ii) in the case of an individual who has an eligible spouse, if only one of them is in such a hospital, home or facility throughout such month, at a rate not in excess of the sum of—

(I) the rate of $300 per year (reduced by the amount of any income, not excluded pursuant to section 1382a(b) of this title, of the one who is in such hospital, home, or facility), and

(II) the applicable rate specified in subsection (b)(1) of this section (reduced by the amount of any income, not excluded pursuant to section 1382a(b) of this title, of the other); and

(iii) at a rate not in excess of $600 per year (reduced by the amount of any income not excluded pursuant to section 1382a(b) of this title) in the case of an individual who has an eligible spouse, if both of them are in such a hospital, home, or facility throughout such month.

2. Section 1905 of the Act, 42 U.S.C. 1396d, provides in pertinent part:

For purposes of this subchapter—

(a) The term "medical assistance" means payment of part or all of the cost of the following care and services * * *

* * * * *

(1) inpatient hospital services (other than services in an institution for tuberculosis or mental diseases); * * *

(4)(A) skilled nursing facility services (other than services in an institution for tuberculosis or mental diseases) for individuals 21 years of age or older * * *;

* * * * *

(14) inpatient hospital services, skilled nursing facility services, and intermediate care facility services for individuals 65 years of age or over in an institution for tuberculosis or mental diseases;

(15) intermediate care facility services (other than such services in an institution for tuberculosis or mental diseases) for individuals who are determined, in accordance with section 1396a(a)(31)(A) of this title, to be in need of such care;

(16) effective January 1, 1973, inpatient psychiatric hospital services for individuals under age 21, as defined in subsection (h) of this section;

* * * * *

except as otherwise provided in paragraph (16), such term does not include—

* * * * *

(B) any such payments with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

* * * * *

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